



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 13-6

November 29, 2013

Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252

HEARING OFFICER RULING VERIZON MA MOTION FOR RECONSIDERATION AND CLARIFICATION

I. INTRODUCTION

The Department of Telecommunications and Cable (“Department”) denies the motion of Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) requesting reconsideration and clarification of the Department’s *Hearing Officer Ruling Verizon MA Motion for Abeyance* (“Ruling”). Verizon MA in its request is not seeking reconsideration of a decided issue and the requested clarification is unnecessary. No discovery issues were before the Department on motion and nothing within the Department’s Ruling affects the scope of discovery.

II. BACKGROUND

In its Ruling on November 4, 2013, the Department denied Verizon MA’s request to hold the proceeding in abeyance and directed the parties to meet and confer and submit a proposed procedural schedule for the proceeding. Ruling at 11. On November 15, 2013, Verizon MA filed its *Motion of Verizon MA for Reconsideration and Clarification* (“Motion”) requesting reconsideration of the Ruling and clarification that discovery will not extend to ongoing contract

negotiations, draft agreements or the terms of any agreement not yet finalized by the parties or, in the alternative, clarification that nothing in the Ruling authorizes discovery on any particular subject matter. Motion at 4. On November 25, 2013, Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Communications of the Mid-Atlantic, Inc., and Virgin Mobile USA, L.P. (collectively “Sprint”) filed its *Opposition to Verizon MA’s Motion for Reconsideration and Clarification* (“Sprint Opposition”), and CTC Communications Corp., d/b/a EarthLink Business; Lightship Telecom, LLC, d/b/a EarthLink Business; Choice One Communications of Massachusetts, Inc., d/b/a EarthLink Business; Conversent Communications of Massachusetts, Inc., d/b/a EarthLink Business; EarthLink Business, LLC (formerly New Edge Network, Inc., d/b/a EarthLink Business); Cbeyond Communications, LLC; tw data services llc; and Level 3 Communications, LLC (collectively, the “Competitive Carriers”) filed their *Competitive Carriers’ Opposition to Verizon MA for Reconsideration and Clarification* (“Competitive Carriers’ Opposition”).

Verizon MA seeks reconsideration of the statement that the “IP Agreement coupled with discovery concerning the ongoing negotiations and the draft agreement Verizon MA identified will likely identify all of the contractual elements, terms, and conditions that will form the parties’ final agreement.” Motion at 1 (quoting Ruling at 9). Verizon MA characterizes this sentence as the Department providing advance authorization of discovery into a particular subject matter. *Id.* at 2. Verizon alleges this authorization erred in expanding the Ruling to address discovery issues. *Id.* Verizon argues that the scope of the authorized discovery exceeds the Department’s authority in this proceeding and would be bad public policy. *Id.* at 4. Verizon MA requests that the Department limit the scope of discovery by clarifying that discovery in the proceeding does not extend to any ongoing contract negotiations, draft agreements, or the terms

of any agreement not yet finalized by the parties. *Id.* Alternatively, Verizon MA requests clarification that nothing in the ruling authorizes discovery. *Id.*

III. ANALYSIS AND FINDING

The Department denies Verizon's MA request for reconsideration and clarification. "Previously decided issues are reconsidered only under extraordinary circumstances requiring that the Department take a fresh look at the record. The burden to demonstrate such extraordinary circumstances is on the party requesting reconsideration. Extraordinary circumstances warranting reconsideration may exist when: (i) previously unknown or undisclosed facts that would have significant impact upon the decision already rendered are newly brought to light; or (ii) an issue was wrongly decided due to the Department's mistake or inadvertence." *Investigation by the Dep't of Telecomms. & Energy on its own motion as to the propriety of the rates & charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.E. 06-61, Order on Clarification and Partial Reconsideration* at 11 (May 11, 2012) (citations omitted).

Verizon MA's request for reconsideration rests on the assertion that the Department in its Ruling also ruled on a matter of discovery that was not before the Department. Verizon MA Motion at 2. Verizon MA is incorrect, as the Department made no such ruling. When the Department stated that the "IP Agreement coupled with discovery concerning the ongoing negotiations and the draft agreement Verizon MA identified will likely identify all of the contractual elements, terms, and conditions that will form the parties' final agreement" (Ruling at 9), it did not make any conclusions about the scope of discovery available in this proceeding. The Department's statement, when considered in context of the Ruling, was summarily

illustrating that the record suggested that sufficient information existed for the identification of the unwritten contractual elements, terms, and conditions under which Verizon MA and Comcast are exchanging VoIP traffic in IP format.¹ Reconsideration is limited to decided issues requiring the Department to take a fresh look at the record. *Investigation by the Dep't of Telecomms. & Energy on its own motion as to the propriety of the rates & charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.E. 06-61, Order on Clarification and Partial Reconsideration* at 11 (May 11, 2012) (citations omitted). As Verizon MA does not seek reconsideration of a decided issue here, the circumstances warranting reconsideration are not present, and Verizon MA's request for reconsideration is denied.

As an alternative to reconsideration, Verizon MA seeks clarification that nothing in the Ruling authorizes discovery in the proceeding on any particular subject matter. Verizon MA Motion at 4. The Department's standard for granting clarification is well established. "The Department may clarify a previously issued order if it is silent as to the disposition of a specific issue requiring determination in the order, or if the order contains language that is sufficiently ambiguous to leave doubt as to its meaning. The Department may also clarify some aspect of an order that may be unclear or confusing. The Department does not reexamine the record for the purpose of substantively modifying a decision. The party requesting clarification has the burden to demonstrate that an order is silent as to the disposition of a specific issue, or contains sufficiently ambiguous language." *Investigation by the Dep't of Telecomms. & Energy on its own motion as to the propriety of the rates & charges set forth in the following tariff: M.D.T.E.*

¹ Sprint and the Competitive Carriers agree that the statement is not a determination on the scope of discovery. Sprint Opposition at 3 ("Sprint does not understand the [] Ruling to constitute an advanced ruling on the scope of discovery."); Competitive Carriers' Opposition at 1 ("The Hearing Officer has not decided that [discovery] issue or set any parameters for future proceedings."). Verizon's MA also recognizes that the statement was not intended to address the scope of discovery. Verizon MA Motion at 2.

No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.E. 06-61, Order on Clarification and Partial Reconsideration at 7-8 (May 11, 2012) (citations omitted).

The Department is not persuaded that the Ruling is so ambiguous or unclear as to require clarification. In the Ruling, the Department made one substantive ruling denying Verizon MA's motion for abeyance and one procedural ruling requesting the parties meet and confer and submit a proposed procedural schedule to the Department. Ruling at 11. The Department's discussion of discovery is limited to its analysis of the extent to which the evidentiary process in the proceeding may be onerous and inefficient to determine whether abeyance is warranted. Ruling at 8-10. The Department did not make discovery determinations in the Ruling.² Accordingly, Verizon MA's alternative request for clarification is denied.

IV. RULING

In accordance with the determinations above, the Department DENIES Verizon MA's motion for reconsideration and clarification.

/s/ Michael Scott

Michael Scott
Hearing Officer

NOTICE OF RIGHT TO APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.

² See n. 1, *supra*.